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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RUSLAN ALIBEKOV,

Petitioner,

v.

CHRISTOPHER LAROSE, warden of
Otay Mesa Detention Center
PATRICK DIVVER, San Diego Field
Office Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO");
TODD LYONS, Acting Director of
Immigration Customs Enforcement
("ICE");
MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security
("DHS");
ACTING Attorney General of the United
States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;

Respondents.

Case No.: '26CV3164 DMS DEB

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Agency Doc. No.: 

1 Petitioner, RUSLAN ALIBEKOV, petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states
3 as follows:

4 INTRODUCTION

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6 1. Petitioner, RUSLAN ALIBEKOV ("Mr. Alibekov" or "Petitioner"), by and
7 through his undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241,
8 et seq., to issue a Writ of Habeas Corpus ordering Mr. Alibekov's release from
9 immigration detention by the Department of Homeland Security, United States
10 Immigration and Customs Enforcement ("ICE"). Mr. Alibekov seeks immediate
11 release from custody because Respondents have held him since July 27, 2025—a
12 prolonged period. Mr. Alibekov has already had his asylum application adjudicated.
13 He has filed an appeal with the Board of Immigration Appeals. No schedule for his
14 case has been set. This will take at least a year to adjudicate. After his entry into the
15 United States, he was first given a CAT interview which he passed. On September 4,
16 2025 his case was allowed move forward. Since then he has filed all his required
17 documents. His final hearing date was April 14, 2026. Mr. Alibekov provided his
18 testimony but the Immigration Judge denied him relief. He was told that he was
19 credible, but did not supply enough supporting documentation. He has appealed this
20 decision. This will take 6 months to a year to resolve. There is no possibility of his
21 removal in the foreseeable future. His continued detention without a hearing as to
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1 flight risk and danger to the community violates the U.S. Constitution and federal
2 law.

3 CUSTODY

4 2. Mr. Alibekov is currently in Respondents' legal and physical custody. They are
5 detaining him at the Otay Mesa Detention Center in San Diego, California. He is
6 under Respondents' and their agents' direct control.
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8 PARTIES

9 3. Mr. Alibekov is a 49-year-old citizen of Russia [REDACTED]. He is
10 currently detained at the Otay Mesa Detention Center in San Diego, California.

11 4. Mr. Alibekov is currently in Respondents' legal and physical custody at the
12 Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
13 corporation, operates that facility.
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15 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
16 Center where Petitioner is being held. Respondent Christopher LaRose oversees the
17 day-to-day operations of the Otay Mesa Detention Center and acts at the Direction of
18 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a
19 custodian of Petitioner and is named in his official capacity.

20 6. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in San
21 Diego, California and is named in his official capacity. ICE is the component of the
22 DHS that is responsible for detaining and removing noncitizens according to
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1 immigration law and oversees custody determinations. In his official capacity, he is
2 the legal custodian of Petitioner.

3 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
4 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
5 and an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. §
6 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is
7 detaining Mr. Alibekov. Respondent Lyons has custodial authority over Mr.
8 Alibekov, who names him in his official capacity.
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10 8. Respondent Markwayne MULLIN is the Secretary of the DHS and is named in
11 his official capacity. DHS is the federal agency responsible for enforcing immigration
12 laws and granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.
13 Respondent Mullin has ultimate custodial authority over Mr. Alibekov, who names
14 him in her official capacity.

15 9. Respondent ACTING Attorney General of the United States is the most senior
16 official in the U.S. Department of Justice (DOJ) and is named in his/her official
17 capacity. He is responsible for the Immigration and Nationality Act’s
18 implementation and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the
19 Executive Office for Immigration Review, the office that administers Mr. Alibekov’s
20 removal proceedings and is responsible for adjudicating Mr. Alibekov’s asylum
21 application. Mr. Alibekov names him in his official capacity.
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1 10. Respondent U.S. Immigration Customs Enforcement is the federal agency
2 responsible for custody decisions relating to non-citizens charged with being removable
3 from the United States, including the arrest, detention, and custody status of non-citizens.

4 11. Respondent U.S. Department of Homeland Security is the federal agency
5 that has authority over the actions of ICE and all other DHS Respondents.

6 7 **JURISDICTION AND VENUE**

8 12. This action arises under the United States Constitution and the
9 Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to
10 challenge Mr. Alibekov's detention under the INA and any inherent or plenary
11 powers the government may claim to continue holding him.

12 13. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§
13 701–706 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S.
14 Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States
15 Constitution. Jurisdiction is not limited by a petitioner's nationality, immigration
16 status, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008).
17 The Court may grant relief under the Suspension Clause; the Fifth and Eighth
18 Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651
19 (All Writs Act), 2001 (Declaratory Judgment Act), and 2241 (habeas corpus).
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21 14. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
22 Mr. Alibekov's detention. Federal district courts possess broad authority to issue
23 writs of habeas corpus when a person is held “in custody in violation of the
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1 Constitution or laws or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and
2 this authority extends to immigration detention challenges that survived the REAL
3 ID Act’s jurisdictional restrictions. Because Mr. Alibekov seeks the traditional
4 habeas remedy of release from allegedly unlawful detention, his petition presents
5 precisely the type of threshold legality-of-detention question that § 2241 was
6 designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-*
7 *Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d
8 1196, 1211-12 (9th Cir. 2011)). And federal courts are not stripped of jurisdiction
9 under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No court
10 has ruled on the legality of Mr. Alibekov’s detention.
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12 15. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1)
13 because a substantial part of the events or omissions giving rise to this claim have
14 happened here, Mr. Alibekov is detained here, and his custodian resides here. Venue
15 is also proper under 28 U.S.C. § 2243 because Mr. Alibekov’s immediate custodian
16 resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004)
17 (Kennedy, J., concurring).
18

19 **FACTUAL BACKGROUND**

20 16. Mr. Alibekov was born in Russia and is a citizen of Russia. He supported
21 efforts of reform and to end corruption. This made him a target of the government.
22 Eventually he was detained and tortured by the government.
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1 17. Mr. Alibekov has been attacked and beaten by government agents. He
2 was constantly threatened to make confessions against himself and his coworkers.
3 As the situation escalated, he realized he would only be safe if he escaped Russia.

4 18. He made his way to Mexico and finally crossed into the United States on
5 July 27, 2025. He immediately encountered CBP officers and was taken into
6 custody. He has been in detention primarily at Otay Mesa Detention Center since
7 July 27, 2025.

8 19. Respondents initially gave Mr. Alibekov a Credible Fear Interview and
9 DHS determined that he did have a credible fear and allowed him to move forward
10 with an asylum application. His Notice to Appear was finally filed and his first
11 Master Calendar was 09/04/2025. He was finally given an individual hearing on
12 April 16, 2026, 7 months after his first master calendar hearing

13 20. At the individual hearing the Immigration Judge determined that
14 Petitioner was credible but did not supply adequate evidence to support relief. His
15 application was denied. Mr. Alibekov has appealed this decision to the Board of
16 Immigration Appeals. This appeal was timely filed and it will take a year for it to be
17 adjudicated.

18 21. There is no end in sight to Mr. Alibekov' detention ... not because he is a
19 flight risk or a threat to the community. That has never been determined. He
20 remains in detention because the administration insists that all people that lack a
21 green card or citizenship must be detained.
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1 22. On July 8, 2025, the Department of Homeland Security (“DHS”)
2 instituted a notice titled “Interim Guidance Regarding Detention Authority for
3 Applicants for Admission” (the “Notice”) requiring, in general, that anyone arrested
4 in the United States and charged with being inadmissible to be considered an
5 “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory
6 detention under 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C.
7 § 1226(a).

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9 23. In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.
10 Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared
11 the Notice unlawful under the Administrative Procedures Act but did not issue a
12 final judgment. On December 18, 2025, however, the *Bautista* court entered final
13 judgement. *Bautista*, ECF No. 94. Subsequent to this an appeal was filed by the
14 Department and the case was put on hold pending the outcome of the appeal.

15 24. Mr. Alibekov thought to ask for a bond but IJ’s have consistently ruled
16 that they do not have jurisdiction to redetermine the conditions of custody over
17 individuals who have been apprehended shortly after entering the United States and
18 who have been processed under Section 235(b)(1) expedited removal statute, and
19 who have been placed in removal proceedings. Even after *Maldonado, supra*, was
20 decided, Immigration Judges have still held that they do not have jurisdiction to
21 conduct bond hearings. So, at this point in San Diego getting a bond is only available
22 by order of the District Court through a Writ of Habeas Corpus.
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25. Mr. Alibekov has come to believe that his detention will have no end. The only end seems to be that he finally breaks down and agrees to voluntary departure. There is no other logical explanation for what is currently going on.

26. Mr. Alibekov's continued detention without a tenable justification and without a demonstration that removal is significantly likely in the reasonably foreseeable future violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

27. The government has failed to effectuate Mr. Alibekov's removal within a reasonable period of time or present any evidence that his removal is significantly likely to occur in the reasonably foreseeable future.

28. Mr. Alibekov's detention without a tenable justification violates his rights under the Due Process Clause of the Fifth Amendment.

EXHAUSTION OF REMEDIES

29. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because

1 administrative remedies are (1) futile and (2) his continued detention results in
2 irreparable harm.

3 30. Exhausting administrative remedies here is futile because Respondents
4 contend Mr. Alibekov is subject to mandatory detention even in the face of
5 *Maldonado, supra*. As such, any request for a hearing will be denied for lack of
6 jurisdiction. Immigration judges in this district claim to have no jurisdiction to
7 conduct a custody redetermination hearing as to individuals procedurally situated
8 like Mr. Alibekov. Indeed, in contravention to the INA and long-standing precedent
9 and practice, the Board of Immigration Appeals and Attorney General have deemed
10 no noncitizen eligible for bond before an immigration judge (with the exception of
11 only noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
12 administrative remedies would be entirely futile.

14 31. Briefly, under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
15 BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the AUSA had
16 asserted that bond hearings are now available. However, the ninth circuit has stayed
17 the final decision pending appeal. No remedy is available at this time.

19 32. Moreover, no statutory exhaustion requirements apply to Petitioner's
20 claim of unlawful custody in violation of his due process rights, and there are no
21 administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination*
22 *Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile
23 exercise because the agency does not have jurisdiction to review" constitutional
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1 claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000)
2 (same).

3 33. Every day that Petitioner remains detained causes him harm that
4 cannot be repaired. His continued detention puts his mental health at greater risk,
5 further warranting a finding of irreparable harm and the waiver of the prudential
6 exhaustion requirement. Mr. Alibekov cannot get the medical attention he requires
7 while he is detained.
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9 34. The Court must consider this in its irreparable harm analysis of the
10 effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
11 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
12 petitioner “continues to suffer significant psychological effects from his detention,
13 including anxiety caused by the threats of other inmates and two suicide attempts,”
14 in finding that petitioner would suffer irreparable harm warranting waiver of
15 exhaustion requirement).
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17 **FIRST CAUSE OF ACTION**
18 **Fifth Amendment Due Process Violation**

19 35. Mr. Alibekov re-alleges and incorporates by reference, as if fully set
20 forth herein, the allegations in all paragraphs above.

21 36. The Supreme Court has long recognized that the Fifth and Fourteenth
22 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
23 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*,
24 118 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not

1 confined to the protection of citizens.”). As stated by the Court, the provisions of the
2 Fourteenth Amendment “are universal in their application, to all persons within the
3 territorial jurisdiction, without regard to any differences of race, of color, or of
4 nationality” *Id.* (emphasis added).

5 37. The Supreme Court has held that “even one whose presence in this
6 country is unlawful, involuntary, or transitory is entitled to that constitutional
7 protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]”
8 *Mathews v. Diaz*, 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210
9 (1982) (“Whatever his status under the immigration laws, an alien is surely a
10 ‘person’ in any ordinary sense of that term.”); *Wong Wing v. United States*, 163 U.S.
11 228, 238 (1896) (“Persons within the territory of the United States... even aliens...
12 [may not]... be deprived of life, liberty or property without due process of law.”).

13 38. As there is no final order of removal, and there doesn’t appear to be
14 one in the reasonably foreseeable future, Mr. Alibekov may not be removed from the
15 United States. His removal is not reasonably foreseeable, and his detention no
16 longer serves any legitimate purpose under the INA.

17 39. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
18 District granted habeas relief in a substantially similar case, applying a six-factor
19 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
20 Wash. 2019), which considers: (1) total length of detention to date; (2) likely
21 duration of future detention; (3) conditions of detention; (4) delays in the removal
22 proceedings caused by the detainee; (5) delays in the removal proceedings caused
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1 by the government; and (6) the likelihood that the removal proceedings will result
2 in a final order of removal. The court determined that prolonged detention, when
3 considered alongside other due process concerns, can rise to the level of a
4 constitutional violation warranting release. *Kydyrali*, 499 F. Supp. 3d at 773.

5 40. Applying the Banda six-factor framework here supports granting Mr.
6 Alibekov's petition.

7 41. The final factor—finality—strongly supports the grant of this habeas
8 petition. Mr. Alibekov has been languishing in detention for over 10 months with no
9 end in sight.

10 42. The long delay to commence his removal proceedings was from the
11 department failing to enter his Notice to Appear in a timely fashion. The second long
12 delay was due to the packed court calendar. Neither delay can be attributed to Mr.
13 Alibekov.

14 43. Mr. Alibekov has now been detained by ICE for nearly 10 months since
15 his arrival in the United States on July 27, 2025. This period is well beyond the
16 presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701.
17 Courts consistently find detention beyond this threshold triggers due process
18 scrutiny. *See Kydyrali*, 499 F.Supp. 3d at 774–75.

19 44. Conditions of confinement also raise constitutional concerns as the
20 medical treatment available at the Otay Mesa Detention Center is not adequate to
21 address Mr. Alibekov's health conditions. Even more, this prolonged detention has
22 had a tremendous depressive effect on Mr. Alibekov.

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 20th day of May, 2026, in San Diego, California.

/s/ Brian J. McGoldrick
Brian J. McGoldrick, Esq.
Attorney for Petitioner